

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number: EB-02-NF-101
)	
Commonwealth Broadcasting, L.L.C.)	NAL/Acct.: No.200332640004
Licensee of FM Radio Station WEXM, Exmore,)	
Virginia)	FRN: 0004988002
Norfolk, Virginia)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

By the Enforcement Bureau, Norfolk Office:

Released: April 2, 2003

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find Commonwealth Broadcasting L.L.C. ("Commonwealth"), licensee of FM radio station WEXM, Exmore, Virginia, apparently liable for a forfeiture in the amount of eight thousand dollars (\$8,000) for willful and repeated violation of Sections 73.1125(a) and 73.1201(b) of the Commission's Rules ("Rules").¹ Specifically, we find Commonwealth apparently liable for failing to maintain a presence at its main studio during normal business hours, and failing to transmit official station identification.

II. BACKGROUND

2. On July 18, 2002, an agent of the FCC Enforcement Bureau's Norfolk Office attempted to conduct an inspection of commercial FM broadcast station WEXM, licensed to serve Exmore, Virginia. Commonwealth is licensed to operate WEXM on a frequency of 106.1MHz in the FM broadcast band. The local telephone book did not contain a listing for WEXM so the agent used direction-finding techniques to locate WEXM's transmitter at coordinates North 37 31' 46", West 075 54' 44", in Exmore, Virginia. The building at the transmitter site was locked and vacant. Subsequent investigation revealed that on July 30, 2002, Commonwealth reported to the Commission that its main studio had been moved to 316 Randolph Ave., Cape Charles, Virginia.

3. On August 27, 2002, the agent telephoned, and a Cape Charles Police officer visited, WEXM's main studio address at 316 Randolph Ave, Cape Charles, Virginia, during normal business hours. There was no answer to the telephone call. The police officer reported that there were no signs or markings on the office at the listed address identifying the location of WEXM's main studio. In addition, the office door was locked, the lights were out, there were no office hours denoted on the door and no indication of why the office was closed.

4. On November 26, 2002, the agent telephoned and visited the listed address of WEXM's main studio location, 316 Randolph Ave., Cape Charles, Virginia, during normal business hours. There was no answer to the telephone call. When the agent arrived at the listed address, there were no signs or

¹ 47 C.F.R. §§ 73.1125(a) and 73.1201(b).

markings on the office to identify the location of WEXM's main studio. The door to the office was locked, the lights were out, there were no office hours denoted on the door and no indication of why the office was closed.

5. On November 27, 2002, the agent telephoned Commonwealth's Norfolk, Virginia office location. During that telephone conversation, a Commonwealth employee admitted that no one was present at WEXM's Cape Charles, Virginia location because of "...the long holiday (Thanksgiving weekend)..."

6. Also, on November 27, 2002, the agent again telephoned and visited the listed address of WEXM's main studio location during normal business hours. Still, there was no answer to the telephone call, the main studio location remained locked, unlit, unoccupied, absent of any identifying markings, no signs of office hours and no indication of why the office was closed.

7. On July 18, 2002, from 12:45pm to 2:07pm, November 27, 2002, from 11:45am to 12:11pm, and December 4, 2002, from 10:50am to 11:10am and from 12:50pm to 1:10pm, the agent monitored the transmissions of WEXM. During those times, WEXM simulcast the programming of WKOC, 93.7 MHz Chesapeake, Virginia, and identified only as "... 93.7, the Coast" The official station identification for WEXM was not broadcast during those times.

III. DISCUSSION

8. Section 73.1125(a) of the Rules states that each AM, FM, or TV broadcast station shall maintain a studio at one of the following locations: (1) within the station's community of license; (2) at any location within the principal community contour of any AM, FM, or TV broadcast station licensed to the station's community of license; or (3) within twenty-five miles from the reference coordinates of the center of its community of license as described in §73.208(a)(1). In adopting the main studio rules, the Commission stated that the station's main studio must have the capability to serve the needs and interests of the residents of the station's community of license.² To fulfill this function, a station must, among other things, maintain a meaningful presence at its main studio.³ The Commission has defined a minimally acceptable "meaningful presence" as full-time managerial and full-time staff personnel.⁴ The licensee need not have the same staff person and manager at the studio, as long as there was management and staff presence there during normal business hours.⁵ Although management personnel need not be "chained to their desks" during normal business hours, they must "report at the main studio on a daily basis, spend a substantial amount of time there and ... use the studio as a home base."⁶ On August 27, November 26 and November 27, 2002, no person was present at WEXM's main studio at its listed address in Cape Charles, Virginia, during normal business hours. On each day, the main studio was locked, unlit and unoccupied. There was no notice at the main studio nor any message at the main studio telephone number indicating the studio was closed or whom to contact.

² *Main Studio and Program Origination Rules*, 2 FCC Rcd 3215, 3217-18 (1987), *clarified*, 3 FCC Rcd 5024, 5026 (1988).

³ *Id.*

⁴ *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 (1991), *clarified*, 7 FCC Rcd 6800 (1992).

⁵ *Id.*, 6 FCC Rcd at 3616, n.2.

⁶ *Id.*, 7 FCC Rcd at 6802.

10. Section 73.1201(b) of the Rules states that, “[o]fficial station identifications shall consist of the station’s call letters immediately followed by the community or communities specified in its license as the station’s location...” On July 18, November 27 and December 4, 2002, WEXM failed to transmit its official station identification, identifying only as “...93.7, the Coast....”

11. Based on the evidence before us, we find Commonwealth willfully⁷ and repeatedly⁸ violated Sections 73.1125(a) and 73.1201(b) of the Rules by failing to maintain a presence at the main studio of WEXM during normal business hours and by failing to transmit an official station identification.

12. Pursuant to Section 1.80(b)(4) of the Rules,⁹ the base forfeiture amount for violation of main studio rules is \$7,000, and failing to transmit the required station identification is \$1,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹⁰ Considering the entire record and applying the factors listed above, this case warrants an \$8,000 forfeiture.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,¹¹ and Sections 0.111, 0.311 and 1.80 of the Rules,¹² Commonwealth is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of eight thousand dollars (\$8,000) for willful and repeated violation of Sections 73.1125(a) and 73.1201(b) of the Rules by failing to maintain a presence at the main studio of WEXM during normal business hours and by failing to transmit its official station identification.

14. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Commonwealth SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

15. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should

⁷ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁸ The term “repeated” means the commission or omission of an act more than once or, if such commission or omission is continuous, for more than one day. 47 U.S.C. § 312(f)(2).

⁹ 47 C.F.R. § 1.80(b)(4).

¹⁰ 47 U.S.C. § 503(b)(2)(D).

¹¹ 47 U.S.C. § 503(b).

¹² 47 C.F.R. §§ 0.111, 0.311, 1.80.

note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹³

16. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

17. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

18. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

19. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Commonwealth Broadcasting, L.L.C. 500 Dominion Tower, 999 Waterside Drive, Norfolk, Virginia 23510 and 316 Randolph Ave. Cape Charles, Virginia 23310.

FEDERAL COMMUNICATIONS COMMISSION

Luther Bolden,
Resident Agent, Norfolk Office, Enforcement Bureau

¹³ See 47 C.F.R. § 1.1914.